

CHAPTER 6

FINANCE AND TAXATION¹

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Vienna Town Code

Article 1. In General

Sec. 6-1 Fiscal Year

The fiscal year of the Town shall begin on July 1 and end on June 30 of the year. (Code 1962, § 1-4)

Sec. 6-2 Form of Budget

The form of the budget for the Town shall be the standard municipal budget form recommended by the auditor of public accounts of the State and the Virginia League of Municipalities. (Code 1962, § 1-5)

Sec. 6-3 Due Date of Real Estate Taxes; When Same Deemed Delinquent; Penalty for Failure To Pay Taxes when Due. (Amend. 6-74; 6-75; 4-77; 6-80; 10-87; 4-90)

All taxes assessed on real estate in the Town shall be due and payable to the Town Treasurer, without discount, on or before July 28 of the year in which assessed, but may be paid in two equal installments, the first to be paid not later than July 28 and the last installment not later than December 5; but if the first installment of such real estate tax is not paid on or before July 28, the amount of such installment shall be delinquent as of that date, and if the second installment is not paid on or before December 5, the amount of such second installment shall be delinquent as of that date. Any payment made on real estate taxes after a penalty has accrued on the first half installment shall be applied first to the payment of the first half installment.

To all real estate taxes that may be delinquent, there shall be added and collected as a part thereof a penalty as follows: on the first one-half installment, a penalty of ten percent (10%), or the sum of five dollars (\$5.00) whichever is greater, if not paid on or before July 28, and on the second one-half installment, a penalty of ten percent (10%), or the sum of five dollars (\$5.00) whichever is greater, if not paid on or before December 5. In addition to such penalties, interest of ten percent (10%) per annum shall be due on such taxes and penalties commencing not earlier than the first day following the day such taxes are due, until paid.

All erroneously assessed taxes refunded by the Town pursuant to law shall be repaid with interest at a rate not to exceed the rate imposed by the Town for delinquent taxes. Such interest shall run from the date such taxes were required to be paid or were paid, whichever is later. Penalties collected with erroneously assessed taxes shall likewise be refunded with such repayment. (New 10-1987)

Sec. 6-4 Tax Relief For the Elderly and Handicapped.

(Amend. 2-74; 2-75; 8-77; 4-79; 2-80; 1-81; 1-82; 12-82; 2-89; 12-03; 4-05)

Sec. 6-4.1 Definitions

Total Combined Income. Gross income from all sources, of the owners of the dwelling residing therein and of any relatives of the owner who reside in the dwelling, provided that the first sixty-five hundred dollars (\$6,500) of income of each relative, other than the spouse, of the owner or owners, who is living in the dwelling and the first seventy-five hundred dollars (\$7,500) of any income received by the applicant for relief as permanent disability compensation shall not be included in such total. (Amend. 2-75; 12-82; 2-89)

Net Combined Financial Worth. All assets of the owners of the dwelling and of the spouse of any owner who resides therein, including equitable interest, excluding the value of the dwelling and the land in an amount not to exceed one acre upon which it is situated and furnishings therein. (Amend. 2-74; 2-89)

Sec. 6-4.2 Eligibility for Exemption or Deferral. (Amend. 2-80; 1-81; 1-82; 2-89; 12-89; 9-02; 12-03; 4-05; 12-05)

Any person not less than sixty-five (65) years of age by December 31 of the year preceding the date of application or any person permanently and totally disabled as provided in Section 6-4.3(b), or any husband and wife of whom at least one spouse is not less than sixty-five (65) or is permanently and totally disabled, who owns or partially owns, a dwelling as the sole dwelling of that person, shall be eligible for and may apply for an exemption from or a deferral of real estate taxes on such dwelling and the land in an amount not to exceed one acre, on which it is situated, provided that the net combined financial worth, as hereinabove defined, as of December 31, of the immediately preceding year, did not exceed three hundred forty thousand dollars (\$340,000.00.)

Exemptions from or deferral of real estate taxes on such dwelling shall thereupon be permitted as follows:

A. Where total combined income as hereinabove defined was during the immediately preceding year at least sixty-two thousand and one dollar (\$62,001.00) and not in excess of seventy-two thousand dollars (\$72,000.00) such person shall be exempted from payment of twenty-five percent (25%) of the real estate tax.

B. Where total combined income as hereinabove defined was during the immediately preceding year at least fifty-two thousand and one dollars (\$52,001.00) and not in excess of sixty-two thousand dollars (\$62,000.00) such person shall be exempted from payment of fifty percent (50%) of the real estate tax.

C. Where total combined income as hereinabove defined was during the immediately preceding year less than fifty-two thousand dollars (\$52,000.00) such person shall be exempted from payment of the total real estate tax.

Sec. 6-4.3 Application for Exemption or Deferral - Affidavit. (Amend. 9-77; 4-79; 2-80; 2-89; 2-93; 9-02)

A. Application for exemption or deferral provided for herein shall be made not later than December 31 of each year for which exemption or deferral is sought, to the Director of Finance on forms to be provided by him, except that application for exemption because of permanent and total disability for tax year 1977 shall be made no later than September 1, 1977. The application shall be accompanied by an affidavit, setting forth the names of all persons occupying such dwelling and stating that the total combined income, and the net combined financial worth, do not exceed the limitations set forth in § 6-4.2(a), (b) and (c). The Director of Finance may require an applicant to answer questions under oath as to his requirements under this Article and/or to produce for inspection certified federal income tax returns for the preceding three years to establish the total combined income or net combined financial worth as hereinbefore defined.

B. If the application is made by a person filing for exemption or deferral because of permanent and total disability, the application shall also be accompanied by a certification by the Veterans Administration or the Railroad Retirement Board, or if such person is not eligible for certification by any of these agencies, a sworn affidavit by two medical doctors licensed to practice medicine in the Commonwealth to the effect that such person is permanently and totally disabled as defined herein. The affidavit of at least one such doctor shall be based upon a physical examination of such person by such doctor. The affidavit of one of such doctors may be based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability as defined herein. The Director of Finance shall find a person permanently and totally disabled for purposes of this Section if he finds such person is certified as required by this Section as unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person's life. The Director of Finance may require an applicant to answer questions under oath, as may be reasonably necessary to determine qualification or to produce for inspection such medical or hospital records as may be reasonably necessary to determine the applicant's qualification.

C. The Director of Finance is authorized to accept late filing of applications hereunder when filed by first time applicants and in any case where the Director finds that the late filing was the result of a hardship case.

Sec. 6-4.4 Effective Date; Change in Circumstances. (Amend. 2-80; 2-89)

A. Changes in income, financial worth, ownership of property or other factors occurring during the taxable year for which an affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided herein shall nullify any exemption or deferral for the then current taxable year and the taxable year immediately following.

B. A change in ownership to a spouse, when such change resulted solely from the death of the qualifying individual, or a sale of such property shall result in a prorated exemption or

deferral for the then current taxable year. The proceeds of the sale which would result in the prorated exemptions or deferral shall not be included in the computation of net worth or income as provided in subsection A. Such prorated portion shall be determined by multiplying the amount of the exemption or deferral by a fraction wherein the number of complete months of the year such property was properly eligible for such exemption or deferral is the numerator and the number twelve (12) is the denominator.

Sec. 6-4.5 Amount of Exemption or Deferral. (Amend. 2-80)

Real estate described in § 6-4.2 shall be exempt or deferred from real estate taxes under the provisions of this Article, for any year in which proper application is made, unless application is made in 1977 for exemption because of permanent and total disability in which case real estate described in § 6-4.2 shall be exempt from fifty percent (50%) of the real estate taxes for 1977; provided that if the ownership of the property for which application for exemption or deferral is made is not solely by the applicant, or jointly with the applicant's spouse, then the amount of the tax exemption or deferral hereunder shall be in proportion to the applicant's ownership interest in the subject real property, as that ownership interest may appear.

Sec. 6-4.6 Deduction.

The Director of Finance shall deduct the amount of exemption or deferral from the applicant's real estate tax bill for the year. (Amend. 2-80)

Sec. 6-4.7 Absence From Property. (Amend. 4-79; 2-80)

The fact that persons who are otherwise qualified for tax exemption or deferral by this section are residing in hospitals, nursing homes, convalescent homes or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax exemption or deferral is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to other for consideration.

Sec. 6-5 Lien for Delinquent Real Estate Taxes; Certificate As To Inability To Collect Taxes and Levies.

A. Real Estate Taxes. Real estate within the Town shall be subject to a lien in favor of the Town to secure the payment of taxes assessed against the same.

B. Collection of Delinquent Taxes and Levies. The Town Treasurer, after using the due diligence to collect taxes and levies due the Town, shall before the first regular meeting of the Town Council in July of each year prepare a list of the taxes and levies which he has been unable to collect, which list the Treasurer shall certify by oath as follows: "I, _____, Treasurer of the Town of Vienna, after having been duly sworn, do certify that I have used due diligence to collect the foregoing taxes and levies and that I have been unable to collect them." Such certificate shall be acknowledged before an officer qualified to administer oaths. (Code 1962, §2-11)

Sec. 6-6 Certificates of Unpaid Taxes.

A. The Treasurer of the Town shall issue, to any applicant therefor, a certificate setting forth the entire amount of unpaid taxes assessed against any real estate within the Town, by or on behalf of the Town, up to and including the last day of the calendar month preceding the date of the certificate.

B. A separate certificate shall be issued for each separate piece of property as the same appears upon the current tax records of the Town. A fee of one dollar (\$1.00) shall be charged for each certificate.

C. The facts as set forth in each certificate shall be binding upon the Town.

No taxes other than those reported as unpaid in the certificate shall thereafter constitute a lien upon the real estate referred to in the certificate.

D. The certificates provided for herein shall be designated "Certificates of Unpaid Taxes" and shall be substantially in the following form:

I hereby certify that the records in the office of the Treasurer for the Town of Vienna, Virginia show that all Town taxes due against the following property known as Lot _____, Block _____, Subdivision _____, on the Town of Vienna tax records and currently assessed in the name of _____, are paid in full to _____, with the exception of the following: _____. (Code 1962, §2-12)

Treasurer

Sec. 6-7 Tax On Net Capital of Banks -- Located in Town.² (Amend. 4-21-80)

A. There is hereby imposed a tax in the amount of eighty percent (80%) of the State rate of taxation on each one hundred dollars (\$100.00) of net capital of any bank located within the Town.

B. If any such bank described in subsection (a) of this section has a branch located outside the Town, the tax imposed shall be upon such proportion of the taxable value of the net capital as the total deposits of the bank or offices located in the Town bear to the total deposits of the bank as of the end of the preceding year. (Code 1962, § 2-13; Amend. 4-80)

Sec. 6-8 Same--Branch Located in Town.³

There is hereby imposed on the branch of any bank whose principal office is located outside the Town, a tax not to exceed eighty per centum of the state rate of taxation on such proportion of the taxable value of the net capital in such bank as the deposits through the branch so located in the Town bear to the total deposits of the bank as of the beginning of the tax year. (Amend. 6-80)

² For State law as to authority of Town to tax net capital of bank located within Town, see Code of Va., § 58-485.010.

³ For State law as to authority of Town to tax stock of branch bank located within Town, see Code of Va., § 58-576.3

Article 2. Utility Taxes

Notwithstanding any other ordinance or other enactment heretofore adopted and currently in force in this jurisdiction, the Town of Vienna, Virginia, the following is hereby adopted and ordained to be effective as set forth hereinbelow:

Sec. 6-9 Definitions (Amend 9/25/00)

Consumer. Every person who, individually or through agents, employees, officers, representatives or permittees, makes a taxable purchase of electricity or natural gas services in this jurisdiction.

Gas Utility. A public utility authorized to furnish natural gas service in Virginia.

CCF. The volume of gas at standard pressure and temperature in units of 100 cubic feet.

Kilowatt Hours (kWh) Delivered. 1000 watts of electricity delivered in a one-hour period by an electric provider to an actual consumer, except that in the case of eligible customer-generators (sometimes called cogenerators) as defined in Virginia Code §56-594, it means kWh supplied from the electric grid to such customer-generators, minus the kWh generated and fed back to the electric grid by such customer-generators.

Person. Any individual, corporation, company or other entity.

Pipeline Distribution Company. A person, other than a pipeline transmission company which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or byproducts thereof to a purchaser for purposes of furnishing heat or light.

Residential Consumer. The owner or tenant of property used primarily for residential purposes, including but not limited to, apartment houses and other multiple-family dwellings.

Service Provider. A person who delivers electricity to a consumer or a gas utility or pipeline distribution company which delivers natural gas to a consumer.

Used Primarily. Relates to the larger portion of the use for which electric or natural gas utility service is furnished.

Sec. 6-10 Electric Utility Consumer Tax (Amend 9/25/00; 2/5/01)

A. In accordance with Virginia Code § 58.1-3814, effective January 1, 2001, there is hereby imposed and levied a monthly tax on each purchase of electricity delivered to consumers by a service provider, classified as determined by such provider, as follows:

1. Residential Consumers. Such tax shall be \$1.40 plus the rate of \$0.015111 on each kWh delivered monthly to residential consumers by a service provider not to exceed \$3.00 monthly.

2. Non-Residential Consumers. Such tax on non-residential consumers shall be at the rates per month for the classes of non-residential consumers as set forth below:

(i) Commercial consumers – Such tax shall be \$1.72 plus the rate of \$0.010206 on each kWh delivered monthly to commercial consumers, not to exceed \$45.00 monthly.

(ii) Industrial consumers – Such tax shall be \$1.72 plus the rate of \$0.010206 on each kWh delivered monthly to industrial consumers, not to exceed \$45.00 monthly.

(iii) Master metered units with residential use – Such tax per unit shall be \$1.40 plus the rate of \$0.015111 on each kWh delivered monthly to master metered dwelling units by a service provider, not to exceed \$3.00 per unit monthly.

3. The conversion of tax pursuant to this ordinance to monthly kWh delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.

B. Exemptions. The following consumers of electricity are exempt from the tax imposed by this section 6-10.

1. Any public safety agency as defined in Virginia Code § 58.1-3813.

2. The United States of America, the Commonwealth and the political subdivisions thereof, including this jurisdiction.

C. Billing, Collection And Remittance Of Tax. The service provider shall bill the electricity consumer tax to all users who are subject to the tax and to whom it delivers electricity and shall remit the same to this jurisdiction on a monthly basis. Such taxes shall be paid by the service provider to this jurisdiction in accordance with Virginia Code § 58.1-3814, paragraphs F.

and G., and Virginia Code § 58.1-2901. If any consumer receives and pays for electricity but refuses to pay the tax imposed by this section, the service provider shall notify this jurisdiction of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction.

Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

In the case of multiple unit housing projects, including but not limited to apartments or condominiums, served by a master meter or by a central plant, the computation of tax shall be made as though each living unit in the project were separately billed or separately metered and billed. (New 2/5/01)

D. Computation of Bills Not on Monthly Basis. Bills shall be considered as monthly bills for the purposes of this ordinance if submitted 12 times per year of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows: (i) the kWh will be divided by 2; (ii) a monthly tax will be calculated using the rates set forth above; (iii) the tax determined by (ii) shall be multiplied by 2; (iv) the tax in (iii) may not exceed twice the monthly “maximum tax”.

Sec. 6-11 Local Natural Gas Utility Consumer Tax (Amend 9/25/00; 2/5/01)

A. In accordance with Virginia Code § 58.1-3814, there is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by pipeline distribution companies and gas utilities classified by “class of consumers” as such term is defined in Virginia Code § 58.1-3814 J., as follows:

1. Residential Consumers. Such tax on residential consumers of natural gas shall be \$1.40 plus at the rate of \$.18356 on CCF delivered monthly to residential consumers, not to exceed \$3.00 per month.

2. Non-Residential Consumers. Such tax on non-residential consumers shall be at the rates per month shown for each CCF delivered by a pipeline distribution company or a gas utility for the classes as set forth below:

(i) Commercial Consumers – Such tax shall be \$1.27 plus the rate of \$.10760 on each CCF up to 125 CCF delivered and \$.09905 on each CCF delivered in excess of 125 CCF, not to exceed \$45.00 monthly.

(ii) Industrial Consumers – Such tax shall be \$1.27 plus the rate of \$.10760 on each CCF up to 125 CCF delivered and \$.09905 on each CCF

delivered in excess of 125 CCF, not to exceed \$45.00 monthly.

3. The conversion of tax pursuant to this ordinance to monthly CCF delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.

B. Exemptions. The following consumers of natural gas shall be exempt from the tax imposed by this section 6-11:

1. Any public safety agency as defined in Virginia Code § 58.1-3813.
2. The United States of America, the Commonwealth and the political subdivisions thereof, including this jurisdiction.

C. Billing, Collection and Remittance of Tax. The service provider shall bill the natural gas consumer tax to all users who are subject to the tax and to whom it delivers natural gas and shall remit the same to this jurisdiction on a monthly basis. Such taxes shall be paid by the service provider to this jurisdiction in accordance with Virginia Code § 58.1-3814, paragraphs H. and I., and Virginia Code § 58.1-2901. If any consumer receives and pays for natural gas billed but refuses to pay the tax imposed by this section, the service provider shall notify this jurisdiction of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction.

Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

In the case of multiple unit housing projects, including but not limited to apartments or condominiums, served by a master meter or by a central plant, the computation of tax shall be made as though each living unit in the project were separately billed or separately metered and billed. (2/5/01)

D. Computation of Bills Not On Monthly Basis. Bills shall be considered as monthly bills for the purposes of this ordinance if submitted 12 times per year of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows: (i) the CCF will be divided by 2; (ii) a monthly tax will be calculated using the rates set forth above; (iii) the tax determined by (ii) shall be multiplied by 2; (iv) the tax in (iii) may not exceed twice the monthly "maximum tax".

Sec. 6-12 Penalties (Amend. 9-25-00)

Any consumer of electricity or natural gas failing, refusing or neglecting to pay the tax imposed and levied under this ordinance, and any officer, agent or employee of any service

provider violating the provisions of this ordinance shall, upon conviction thereof, be guilty of a Class I Misdemeanor. Each such failure, refusal, neglect or violation shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection and remittance of the tax as provided in this ordinance.

Sec. 6-13 Definitions. (Amend. 4-21-03)

For the purposes of this Article, the following words and phrases shall have the meaning respectively ascribed to them by this Section.

LOCAL TELECOMMUNICATION SERVICE subject to the exclusions stated in this article includes, without limitation, the two-way local transmission of messages through use of switched local telephone services; telegraph services; *or* teletypewriter.

LOCAL TELEPHONE SERVICE subject to the exclusions stated in this article includes any service subject to federal taxation as local telephone service as that term is defined in Section 4252 of the Internal Revenue Code of 1986, as amended, or any successor statute.

RESIDENTIAL CONSUMER shall not include any consumer of mobile local telecommunication service.

SERVICE ADDRESS means the location of the telecommunication equipment from which the telecommunication is originated, or at which the telecommunication is received by a consumer. However, if the service address is not a defined location, as in the case of maritime systems, air-to-ground systems and the like, service address shall mean the location of the subscriber's primary use of the telecommunication equipment within the licensed service area.

SERVICE PROVIDER means every person engaged in the business of selling local telecommunication services to consumers.

UTILITY SERVICE means local service and local telecommunication service, whether generally termed a utility service or not, furnished in the Town.

Sec. 6-14 Levy of Tax; Amount; Computation of Bill Generally. (Amend. 4-21-03)

A. There is hereby imposed and levied by the Town of Vienna, upon each and every purchaser of a utility service, a tax in the amount of twenty per centum (20%) for residential users and fifteen per centum (15%) for commercial users of the charge (exclusive of any federal tax thereon), made by the seller against the purchaser with respect to each utility service, and shall be paid by the purchaser unto the seller for the use of the Town of Vienna at the time the purchase price or such charge shall become due and payable under the agreement between the purchaser and seller; provided that in case any monthly bill submitted by a seller for telephone service shall exceed fifteen dollars (\$15.00) for a residential user, there shall be no tax computed on so much of such bill as shall exceed fifteen dollars (\$15.00).

B. In case any monthly bill submitted by any seller for a commercial or industrial user of telephone service shall exceed three hundred dollars (\$300.00), there shall be no tax computed on so much of the bill as shall exceed three hundred dollars (\$300.00). In case a bill is submitted by the seller for purchases made by the user during periods of greater than one month, then the amount of such bill subject to taxation hereunder shall be the amount in which a bill for the subject utility shall be taxed in a single month multiplied by the number of months for which the bill is submitted. Bills shall be considered monthly bills if submitted twelve (12) times per year for periods of approximately one month each.

Sec. 6-15 Local Mobile Telecommunication Tax (New 6-21-04)

A. Except as otherwise provided under the Code of the Town of Vienna, a tax is imposed on local mobile telecommunication services used by consumers with a place of primary use within the Town of Vienna. This tax is imposed at a rate of ten percent (10%) of the monthly gross charge to a consumer of local mobile telecommunication services, but this tax shall not be imposed on any monthly gross charge in excess of \$30.00 per month for each mobile service consumer. A provider of local mobile telecommunications services shall collect the tax from each mobile service consumer by adding the tax to the monthly gross charge for such services. This tax shall, when collected by a mobile service provider, be stated as a distinct item separate and apart from the monthly gross charge. All taxes paid to and collected by a mobile service provider shall be deemed to be held in trust by the mobile service provider until remitted to the Town of Vienna. All taxes paid to and collected by a mobile service provider shall be remitted on a monthly basis to the Director of Finance.

B. Any consumer shall be entitled to a refund from the Town equal to the amount of any tax the consumer paid to a jurisdiction outside of the Commonwealth if such tax was legally imposed in such other jurisdiction. The amount of any such refund shall not exceed the tax paid to the Town.

C. The terms “consumer,” “gross charge,” “local mobile telecommunications service,” “mobile service consumer,” “mobile service provider,” “place of primary use,” “service address,” and “service provider” have the definitions specified in Virginia Code Section 58.1-3812.

Article 3. Cigarette Tax

Sec. 6-16 Definitions. (Emer. 6-84; Reg. 7-84; Amend. 11-05)

For the purposes of this Article, the following words and phrases have the meanings respectively ascribed to them by this section, except in those instances where the context clearly indicates a different meaning:

- A. "Board" or "NVCTB" means the Northern Virginia Cigarette Tax Board.
- B. "Carton" means any container, regardless of material used in its construction, in which packages of cigarettes are placed.
- C. "Cigarette" means and includes any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.
- D. "Cigarette Machine Operator" means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.
- E. "Dealer" means and includes every manufacturer's representative, wholesaler, retailer, cigarette machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the Town.
- F. "Package" means and includes any container, regardless of the material used in its construction, in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which they are consumed by their ultimate user. Ordinarily a package contains twenty cigarettes; however, "package" includes those containers in which fewer or more than twenty cigarettes are placed.
- G. "Person" means and includes any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof; and as applied to a corporation, includes all the officers and directors thereof.
- H. "Place of business" means and includes any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a Dealer within the Town.

I. "Registered Agent" means and includes every Dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this Article.

J. "Retail Dealer" means and includes every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the Town to the ultimate consumer; or any person who, in the usual course of business owns, leases or otherwise operates within his own place of business, one or more cigarette vending machines for the purpose of sale within the Town of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers or deals in cigarettes for the purpose of sale within the Town to the ultimate consumer, who is not licensed as a wholesaler or vending machine operator.

K. "Sale" or "Sell" means and includes every act or transaction, regardless of the method or means employed, including barter, exchange or the use of vending machines or other mechanical devices or a criminal or tortious act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the Town from a Dealer as herein defined to any other person for a consideration.

L. "Stamp" means a small gummed piece of paper or decal used to evidence provision for payment of the tax as authorized by the Northern Virginia Cigarette Tax Board, required to be affixed to every package of cigarettes sold, distributed, or used within the Town.

M. "Store" or "Storage" means and includes the keeping or retention of cigarettes in this Town for any purpose except sale in the regular course of business.

N. "Town" means the Town of Vienna, Virginia.

O. "Use" means and includes the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

P. "User" means any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this Article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

Q. "Wholesale Dealers" means any individual, partnership or corporation engaged in the sale of packages of cigarettes for resale into or within the Town.

Sec. 6-17 Levy and Rate. (Amend. 6-18-70; EMER.6-84; Reg. 7-84; 6-90; 6-93; 6-02; 6-03; 11-05; 7-07)

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the Town upon every person who sells or uses cigarettes within the Town an

and three-fourth (3.75) cents for each cigarette contained in packages of fewer or more than twenty cigarettes sold or used within the Town. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the Town shall be paid but once.

Sec. 6-18 Methods of Collection. (Amended 11-05)

The tax imposed by this Article shall be evidenced by the use of a tax stamp and shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the Board to carry out the provisions of this Article. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each Dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect, pay the tax and report all packages of cigarettes on forms prescribed for this purpose by the Board:

- (1) The quantity of NVCTB stamped cigarettes sold or delivered to:
 - (a) Each Registered Agent appointed by the Board for which no tax was collected;
 - (b) Each manufacturer's representative; and
 - (c) Each separate person and place of business during the preceding calendar or fiscal month; and
- (2) The quantity of NVCTB stamps on hand, both affixed and unaffixed on the first and the last day of the preceding calendar or fiscal month and the quantity of NVCTB stamps or NVCTB stamped cigarettes received during the preceding calendar or fiscal month; and
- (3) The quantity of cigarettes on hand to which the NVCTB stamp had not been affixed on the first and the last day of the preceding calendar or fiscal month and the quantity of cigarettes received during the preceding calendar or fiscal month to which the NVCTB stamp had not been affixed; and
- (4) Such further information as the Administrator for the Board may require for the proper administration and enforcement of this Article for the determination of the exact number of cigarettes in the possession of each Dealer or user.

Each Dealer or other person liable for the tax shall file such reports with the Board and pay the tax due to the Board prior to the due date, and shall furnish copies of all cigarette tax reports submitted to the Virginia Department of Taxation.

When, upon examination and audit of any invoices, records, books, cancelled checks or other

herein, any Dealer or other person liable for the tax is unable to furnish evidence to the Board of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The Board shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due, impose a penalty of ten per cent and may impose interest of three-quarters per cent per month of the gross tax due.

When any Dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of the tax, the Board shall administratively assess the tax due and impose a penalty not to exceed fifty per cent of the tax due and interest of three-quarters per cent per month of the gross tax due.

The Dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten days after notice of such deficiency has been issued. Every Dealer or other person liable for the tax shall examine each package of cigarettes to insure that the NVCTB stamp has been affixed thereto prior to offering them for sale.

Any Dealer or other person liable for the tax who shall receive cigarettes not bearing the NVCTB stamp shall, within one hour of receipt of such cigarettes, commence and with all reasonable diligence continue to affix the NVCTB stamp to each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering such cigarettes for sale. Any Dealer or other person liable for the tax who has notified the Board that he is engaged in interstate or intrastate business shall be permitted to set aside such part of his stock as may be legally kept for the conduct of such interstate or intrastate business (that is, cigarettes held for sale outside the jurisdiction of the Board) without affixing the stamps required by this Article. Any such interstate or intrastate stock shall be kept entirely separate and apart from the NVCTB stamped stock, in such a manner as to prevent the co-mingling of the interstate or intrastate stock with the NVCTB stock. Any Dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost, whether by negligence, theft, or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

It shall also be the duty of each Dealer or other person liable for the tax to maintain and keep for a period of three years, not including the current calendar year, records of all cigarettes received, sold, stored, possessed, transferred or handled by him in any manner whatsoever, whether the same were stamped or unstamped, to make all such records available for audit, inspection and examination at all reasonable times, as well as, the means, facilities and opportunity for making such audit, inspection or examination upon demand of the Board.

Sec. 6-19 Registered Agents. (Emer. 6-84; Reg. 7-84; Amended 11-05)

Any Dealer or other person liable for the tax who shall sell, use, store, possess, distribute, or

Registered Agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant as the Board deems necessary for the administration and enforcement of this Article. There is a yearly Registration Fee for all Wholesale Dealers and all Cigarette Machine Operators. Applicant shall provide a surety bond to the Board of 150 per cent of his average monthly tax liability with a surety company authorized to do business in the Commonwealth of Virginia. Such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year. Any applicant whose place of business is outside the Town shall automatically, by filing his application, submit himself to the Board's legal jurisdiction and appoint the Administrator for the Board as his agent for any service of lawful process.

Upon receipt of the properly completed required application forms, and the required surety bond executed, the Board shall determine whether the said applicant qualifies to be a Registered Agent. The Board will issue to said qualified applicant a yearly Registered Agent permit to qualify him to purchase, sell, use, store, possess, distribute or transport within or into the Town, NVCTB stamped cigarettes.

Registered Agents shall agree to the reporting and payment requirements placed upon him by this Article and the rules and regulations as from time to time may be promulgated by the Board. When any Registered Agent's monthly report and payment of the tax is not received within the dates prescribed, the Board shall impose a late reporting penalty of ten per cent of the gross tax due or ten dollars, whichever is greater, but in no event more than \$1,000. The Board also may require such Registered Agent to provide proof that he has complied with all applicable laws of the Commonwealth of Virginia to legally conduct such business and to file financial statements showing all assets and liabilities. The Board may revoke or suspend any Registered Agent's permit due to failure to file tax reports in a timely manner, non-payment of taxes due, or if the cigarette tax surety bond should become impaired for any reason.

All money collected as cigarette taxes under this ordinance shall be deemed to be held in trust by the Dealer collecting the same until remitted to the Board.

Registered Agents must account for all NVCTB authorized tax stamps purchased. Periodic audits may be conducted to determine any unaccounted variance between the number of stamps purchased and the number of stamps reported, and an assessment will be made for all unaccounted for stamps. Any assessment of Registered Agents located outside the jurisdictions of the Board will be based upon the average sales of packages of cigarettes by jurisdiction during the audit period. For Registered Agents located within the jurisdiction of the Board, any assessment will be based upon the tax rate of the jurisdiction in which they are located. In addition, there will be a penalty for non-reporting of ten per cent of the gross tax due.

Sec. 6-20 Requirements for Retail Dealers. (Emer. 6-84; Reg. 7-84; Amended 11-05)

Retail Dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport

Agents giving or supplying the business trade name and business address of the location where the cigarettes will be placed for sale to the public. Cigarettes purchased for personal use cannot be brought into a business for resale. Only properly registered and licensed retail stores may sell cigarettes to the public. To be properly registered and licensed, a retail store must first have a valid Virginia state sales and use tax certificate and valid retail business license. Cigarettes must be purchased and stored separately for each business location. All copies of cigarette purchase invoices/receipts must be retained by the retailer for a period of three years and shall be made available to Agents of the NVCTB upon request for use in conducting audits and investigations. All copies of cigarette purchase invoices/receipts must be stored at the business retail location for a period of one year from date of purchase. Failure to provide cigarette invoices/receipts may result in confiscation of cigarettes until receipts can be reviewed by the Board to verify the proper tax has been paid. It is the responsibility of each retail location to insure that all cigarettes placed for sale or stored at that location be properly taxed and stamped. Cigarettes found without the NVCTB stamp or the proper jurisdictional tax paid will be seized by the Agents of the Board.

Retail Dealers must make their place of business available for inspection by Tobacco Revenue Agents to insure that all cigarettes are properly tax-stamped and all cigarette taxes are properly paid.

Sec. 6-21 Presumption of Illegality; Seizure of Contraband Goods, Sealing/Seizing of Machines.
(Amended 11-05)

If any cigarette machine operator or other person liable for the tax imposed by this Article is found to possess any cigarettes without the jurisdictional tax paid or the proper tax stamp affixed, there shall be a rebuttable presumption that any such operator or other person shall be in possession of untaxed cigarettes in violation of this Section.

If any cigarettes are placed in any vending machines within the Town, then there shall be a rebuttable presumption that such cigarettes were placed in that machine for sale within the Town. If any vending machine located within the Town contains cigarettes upon which the NVCTB tax stamp has not been affixed or on which the jurisdictional tax has not been paid or containing cigarettes placed so as to not allow visual inspection of the NVCTB tax stamp through the viewing area as provided for by the vending machine manufacturer, then there shall be a rebuttable presumption that the machine contains untaxed cigarettes in violation of this Article.

Any cigarettes, vending machines, cigarette tax stamps, or other property found in violation of this Article shall be declared contraband goods and may be seized by the Board. In addition to any tax due, the Dealer or other person liable for the tax possessing such untaxed cigarettes or tax stamps shall be subject to civil and criminal penalties herein provided.

In lieu of seizure, the Board may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any

seizure of any vending machine at any time after it is sealed.

All cigarette vending machines shall be plainly marked with the name, address and telephone number of the owner of said machine.

Sec. 6-22 Illegal Acts. (Amended 11-05)

It shall be unlawful and a violation of this Article for any Dealer or other person liable for the tax:

A. To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this Article or of any part thereof, or to fail or refuse to perform any of the duties imposed upon him under the provisions of this Article or to fail or refuse to obey any lawful order which may be issued under this Article; or

B. To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps; or

C. To sell, offer for sale, or distribute any cigarettes upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid; or

D. To possess, store, use, authorize or approve the possession, storage or use of any cigarette packages upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid; or

E. To transport, authorize or approve the transportation of any cigarette packages in quantities of more than sixty packages into or within the Town upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid, if they are:

(1) Not accompanied by a receipt/ bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or

(2) Accompanied by a receipt/ bill of lading or other document which is false or fraudulent in whole or part; or

(3) Accompanied by a receipt/ bill of lading or other document indicating:

(i) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such

of destination has been paid and said cigarettes bear the tax stamps of that jurisdiction; or

- (ii) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate and, where applicable, any licenses issued by the Commonwealth or local jurisdiction of destination; or

F. To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or

G. To remove from any package any stamp with intent to use or cause the same to be used after the same has already been used or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had theretofore been used for evidence of the payment of any tax prescribed by this Article or to sell, or offer to sell, any stamp provided for herein; or

H. To sell, offer for sale or distribute any loose or single cigarettes; or

I. To perform any act that violates the resolutions promulgated by the Board.

It shall be unlawful and a violation of the Article for any person or individual to transport, possess, store, use authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty packages upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid.

Sec. 6-23 Establishment of the Northern Virginia Cigarette Tax Board. (Amended 11-05)

The Resolution adopted by the Vienna Town Council, dated 6-15-70, pertaining to the establishment of the Northern Virginia Cigarette Tax Board is hereby continued in effect and made a part of this Article by reference.

Any inconsistencies between the powers granted to the Board in the Resolution adopted by the Vienna Town Council, dated 6-15-70, and herein incorporated by reference and the powers granted to the Board in Section 6-24 shall be resolved in favor of those provisions in Section 6-24.

The Board's fiscal year shall be from July 1 through June 30.

Sec. 6-24 Powers of the Northern Virginia Cigarette Tax Board. (Amended 11-05)

The Board may delegate any of its powers to its Administrator or employees and may adopt regulations regarding the administration and enforcement of the provisions of this Article.

A. The Board shall be granted the following powers:

- (1) To assess, collect and disburse the cigarette tax for each participating jurisdiction;
- (2) To audit sales of cigarettes for each participating jurisdiction;
- (3) To provide information to Commonwealth's attorneys or Town Attorney for each participating jurisdiction;
- (4) To designate an Administrator.
- (5) To manage the Northern Virginia Cigarette Tax Fund;
- (6) To retain a certified public accountant to audit its books;
- (7) To designate a depository bank or banks;
- (8) To contract with member jurisdictions for administrative services;
- (9) To hold and convey real and personal property;
- (10) To enter into contracts;
- (11) To hire, supervise and discharge its own employees;
- (12) To sue and be sued in its own name;
- (13) To prescribe the design of a stamp(s) and to issue and sell said stamps to authorized dealers;
- (14) To establish different classes of taxpayers;
- (15) To promulgate resolutions for the assessment and collection of cigarette taxes and the enforcement of this ordinance; and
- (16) To conduct inspections of any place of business in order to enforce the provisions of this ordinance and all resolutions of the Board.

B. The Board may employ legal counsel, bring appropriate court action in its own name to enforce payment of the cigarette tax or penalties owed and file tax liens against property of taxpayers hereunder.

C. The Board is authorized to enter into an agreement with the Virginia Department of Taxation under which a registered agent with the NVCTB who is also qualified to purchase Virginia Revenue Stamps, may qualify to purchase dual Virginia-NVCTB stamps from the Virginia Department of Taxation. Authority to purchase dual Virginia-NVCTB stamps is granted solely by the Board and may be revoked or suspended for violations of this ordinance or resolutions adopted by the Board.

D. The Board may appoint certain employees as Tobacco Revenue Agents, who shall be required to carry proper identification while performing their duties. Tobacco Revenue Agents are further authorized to conduct inspections of any place of business and shall have the power to seize or seal any vending machines, seize any cigarettes, counterfeit stamps or other property found in violation of this Article and shall have the power of arrest upon reasonable and probable cause that a violation of this Article has been committed. The Board is authorized to provide its Tobacco Revenue Agents with (1) firearms for their protection; (2) emergency-equipped vehicles while on duty; and (3) other equipment deemed necessary and proper.

E. The Board may exchange information relative to the sale, use, transportation or shipment of cigarettes with an official of any other jurisdiction entrusted with the enforcement of the cigarette tax laws of said other jurisdiction.

Sec. 6-25 Jeopardy Assessment.

If the Administrator for the Board determines that the collection of any tax or any amount of tax required to be collected and paid under this Article, will be jeopardized by the delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties and interest. In the case of a current period, for which the tax is in jeopardy, the Administrator may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by this Article for filing a return and paying the tax has expired.

Sec. 6-26 Erroneous Assessment: Notices and Hearings in the Event of Sealing of Vending Machines or Seizure of Contraband Property. (Amended 11-95; 11-05)

Any person assessed by the Board with a cigarette tax, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this Article, who has been aggrieved by such assessment, seizure, or sealing may file a request for a hearing before the Administrator for the Board for a correction of such assessment and the return of such property seized or sealed.

Where holders of property interest in cigarettes, vending machines or other property are known at time of seizure or sealing, notice of seizure or sealing shall be sent to them by certified mail within twenty-four hours. Where such holders of property interests are unknown at time of seizure or sealing, it shall be sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contained such seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

Such hearing shall be requested within ten days of the notice of such assessment, seizure, or sealing and shall set forth the reasons why said tax, penalties and interest, cigarettes, vending machines or other property should be returned or released. Within five days after receipt of such hearing request the Administrator shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within fifteen days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest has not been paid as required or if the request is received more than ten days from first notice to the petitioner of such seizure or sealing. Within five days after the hearing, the Administrator shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.

Appropriate relief shall be given by the Administrator if he is convinced by the preponderance of the evidence that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the Administrator is satisfied that the tax was erroneously assessed, he shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any petitioner who is dissatisfied with the written decision of the Board may within thirty days of the date of such decision, appeal such decision to the appropriate Court in the jurisdiction where the seizure or sealing occurred.

Sec. 6-27 Disposal of Seized Property.

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the Board after any petitioner has exhausted all administrative appeal procedures. No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax and penalties assessed.

Sec. 6-28 Extensions. (Amended 11-05)

The Administrator, upon a finding of good cause may grant an extension of time to file a tax

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report upon written application for a period not exceeding thirty days. Except as hereinafter provided, no interest or penalty shall be charged, assessed or collected by reason of the granting of such an extension.

Sec. 6-29 Penalty for Violations of Chapter. (Amended 11-05)

Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$2,500.00 or imprisonment for not more than twelve months or by both such fine and imprisonment. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty or interest imposed by this Article.

Sec. 6-30 Each Violation a Separate Offense. (Amended 11-05)

The sale of any quantity, the use, possession, storage or transportation of more than sixty packages of cigarettes upon which the NVCTB tax stamp has not been affixed or the proper jurisdictional tax has not been paid shall be and constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.

Sec. 6-31 Severability. (Deleted 11-05)

Article 4. Meals Tax (New 11-6-89)

Sec. 6-32 Definitions (Amend. 7-3-00)

The following words and phrases, when used in this ordinance, shall have, for the purposes of this ordinance, the following respective meanings except where the context clearly indicates a different meaning:

Cater. The furnishing of food, beverages, or both on the premises of another, for compensation.

Collector. The Director of Finance, Treasurer or designee.

Director. The Director of Finance and any duly designated deputies, assistants, inspector or other employees.

Food. All food, beverages or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.

Food Establishment. Any place in or from which food or food products are prepared, packaged, sold or distributed in the Town, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sold for immediate consumption.

Meal. Meal shall mean any prepared food or drink offered or held out for sale by a food establishment for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

Town. The Town of Vienna, Virginia.

Sec. 6-33 Levy (Amend. 7-3-00; 11-19-01)

A. There is hereby imposed and levied by the Town on each person a tax at the rate of three percent (3%) on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not.

B. Applicable for tax periods beginning January 1, 2002 and ending June 30, 2008.

Beginning January 1, 2002 there is imposed and levied by the Town on each person a tax at the rate of four percent (4%) on the amount paid for meals purchased from any food establishment whether prepared in such food establishment or not, and whether consumed on the premises or not.

C. Applicable for tax periods beginning July 1, 2008.

Beginning July 1, 2008, there is imposed and levied by the Town on each person a tax at the rate of three percent (3%) on the amount paid for meals purchased from any food establishment whether prepared in such food establishment or not, and whether consumed on the premises or not.

Sec. 6-34 Collection of Tax by Seller (Amend. 7-3-00)

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this ordinance from the person on whom the same is levied or from the person paying for such food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.

All tax collections shall be deemed to be held in trust for the Town.

Sec. 6-35 Exemptions: Limits on Application (Amend. 7-3-00)

A. The tax imposed under this ordinance shall not be levied on factory-prepackaged candy, gum, nuts and other items of essentially the same nature served for on or off-premises consumption.

B. The tax imposed under this ordinance shall not be levied on the following items when served exclusively for off-premises consumption:

1. Donuts, ice cream, crackers, nabs, chips, cookies and factory-prepackaged items of essentially the same nature;

2. Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.
3. Alcoholic and non-alcoholic beverages sold in factory sealed containers.
4. Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children;
5. Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, U.S.C. § 2012, as amended except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and non-factory sealed beverages. This subsection shall not affect provisions set forth in subparagraphs D, 3, 4 and 5 herein below.

C. A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

D. The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

1. Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
2. Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
3. Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.

4. Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof and the spouses and children of such persons.
5. Food and beverages furnished by a public or private non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
6. Food and beverages not prepared by a paid vendor and sold on an occasional basis by a non-profit educational, charitable or benevolent organization, church or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.

Sec. 6-36 Gratuities and Service Charges (Amend. 7-3-00)

Where a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this ordinance, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

An amount or percent, whether designated as a gratuity, tip or service charge, that is added to the price of the food and beverages by the seller, and required to be paid by the purchaser, as a part of the selling price of the food and beverages and is subject to the tax imposed by this ordinance.

Sec. 6-37 Report of Taxes Collected; Remittance; Preservation of Records (Amend. 7-3-00)

It shall be the duty of every person required by this ordinance to pay to the Town the taxes imposed by this ordinance to make a report thereof setting forth such information as the Director may prescribe and require, including all purchases taxable under this ordinance, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this ordinance. Such records shall be kept and preserved for a period of five (5) years. The Director or his duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this ordinance, and to make transcripts of all or any parts thereof.

Sec. 6-38 Penalty for Violation of Ordinance (Amend 7-3-00)

A. Any person willfully failing or refusing to file a return as required under this ordinance shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is \$1,000.00 or less. Any person violating or failing to comply with any other provision of this ordinance shall be guilty of a class 1 misdemeanor.

B. Except as provided in subsection A above, any corporate or partnership officer, as defined in Virginia Code § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this ordinance, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class 1 misdemeanor.

C. Each violation of or failure to comply with this ordinance shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this ordinance.

Sec. 6-39 Preservation of Records (Amend. 7-3-00)

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this Article to preserve for a period of two (2) years records showing all purchases taxable under this Article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this Article. The Director of Finance shall be authorized to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this Article and to make transcripts of all or any parts thereof.

Sec. 6-40 Duty of Person Going Out of Business (Amend. 7-3-00)

Whenever any person required to collect and remit to the Town any tax imposed by this Article shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable, and the person shall immediately make the Director of Finance a report and remittance thereof.

Sec. 6-41 Enforcement (Amend. 7-3-00)

- (a) It shall be the duty of the Director of Finance to ascertain of every seller in the Town, liable for the collection of the tax imposed by this Article, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this Article. The Director of Finance may have issued a summons for such person, and the summons may be served upon such person by any Town Police Officer in the manner provided by law and the Director of Finance may seek a conviction or other civil remedy, including injunction, against such person.
- (b) In the event the purchaser of any meal refuses to pay the tax imposed by this Article, the seller may call upon the Police Department for assistance; and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the General District Court as provided by law.

Sec. 6-42 Regulations (Amend. 7-3-00)

The Director of Finance may issue regulations for the administration and enforcement of this Article not in conflict with this Article.

Sections 6-43 through 6-47 are reserved. (Amend. 7-3-00)

Article 5. Tax on Transient Room Rentals (NEW 11-6-89)

Sec. 6-48 Definitions

For the purpose of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this section unless the context clearly indicates a different meaning;

Director of Finance: The Director of Finance of the Town of Vienna and his or her duly designated deputies, assistants, inspectors, clerks or other employees.

Hotel: Any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house or other lodging place within the Town offering lodging, as defined in this section, for compensation to any transient, as hereinafter defined in this section.

Lodging: Room or space furnished any transient.

Person: Any individual, corporation, company, association, firm, co-partnership or any group of individuals acting as a unit.

Transient: Any person who, for a period of not more than thirty (30) consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any space at any hotel, for which lodging or use of space a charge is made.

Sec. 6-49 Levy of Tax on Transient Room Rentals; Collection Generally (Amend. 11-19-01)

A. There is hereby imposed and levied upon every transient obtaining or occupying lodging within the Town, a tax equivalent to three percent (3%) of the amount charged for such lodging. This tax shall be collected from transients in the manner and at the time provided in this Article. (Amend. 12-3-90)

B. Applicable for tax periods beginning January 1, 2002 and ending June 30, 2008:

Beginning January 1, 2002 there is imposed and levied by the Town upon every transient obtaining or occupying lodging within the Town, a tax at the rate of four percent (4%) on the amount charged for such lodging.

C. Applicable for tax periods beginning July 1, 2008:

Beginning July 1, 2008, there is imposed and levied by the Town upon every transient obtaining or occupying lodging within the Town, a tax at the rate of three percent (3%) on the amount charged for such lodging.

Sec. 6-50 Collection From Transients; When Payable

Every person receiving any payment for lodging or the use of space with respect to which a tax is levied under this Article shall collect the amount of such tax so imposed from the transient on whom such tax is levied, or from the person paying for such lodging, at the time payment for such lodging is made. The taxes required to be collected under this Article shall be deemed to be held in trust by the person required to collect such taxes until the same shall have been remitted to the Town as provided by this Article.

Sec. 6-51 Report of Collection and Remittance of Tax

The person collecting any tax as provided in this Article shall make out a report thereof upon such forms setting forth such information as the Director of Finance may prescribe and require, showing the amount of lodging, charges collected and the tax required to be collected and shall sign and deliver such reports with the remittance of such tax to the Director of Finance. Such reports and remittances shall be made on or before the twentieth day of each month covering the amount of tax due and collected during the preceding month.

Sec. 6-52 Discount

For the purposes of compensating persons required to collect such taxes for the collection of the tax imposed by this Article, every person required to collect such taxes shall be allowed three percent (3%) of the total amount of the tax due and accounted for in the form of a deduction on his or her monthly return; provided, the amount due is not delinquent at the time of payment.

Sec. 6-53 Penalty and Interest For Non-Remittance

If any person whose duty it is to do so shall fail or refuse to report and remit to the Director of Finance the tax required to be collected and paid under this Article within the time and in the amount as provided for in this Article, there shall be added to such tax by the Director of Finance, a penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax due. The Director of Finance shall also assess interest on the tax and penalty at the rate of ten percent (10%) per year from the day after the tax is due until paid.

Sec. 6-54 Failure to Collect and Report Tax

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this Article and to make within the time provided herein any report and remittance required, the Director of Finance shall proceed in such manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Director of Finance has secured whatever

information as he is able to obtain upon which to base the assessment of any tax due and payable by any person who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such person the tax and penalty and interest as provided for in this Article and shall notify such person by certified mail sent to his or her last known address, the amount of such tax and penalty and interest. The total amount thereof shall be payable with ten (10) days of mailing of such notice. The Director of Finance shall have the power to examine such records for the purpose of administering and enforcing the provisions of this Article as are provided by law.

Sec. 6-55 Preservation of Records

It shall be the duty of every person liable for the collection and remittance of the taxes imposed by this Article to keep and preserve for a period of two (2) years such suitable records as may be necessary to determine the amount of such tax as he may have been responsible for collecting and paying to the Town. The Director of Finance shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this Article and to make transcripts of all or any parts thereof.

Sec. 6-56 Cessation of Business; Tax Due Immediately

Whenever any person required to collect and pay to the Town a tax imposed by this Article shall cease to operate, go out of business, or otherwise dispose of his business, any tax then payable to the Town shall become immediately due and payable, and such person shall immediately make a report and pay the tax due to the Director of Finance.

Sec. 6-57 Exceptions for Governmental Employees on Official Business

No tax shall be payable hereunder with respect to any payment for lodging or the use of space paid by for any Federal, Virginia or Town official or employee when on official business.

Sec. 6-58 Enforcement

A. It shall be the duty of the Director of Finance to ascertain the name of every hotel offering lodging to a transient in the Town, liable for the collection of the tax imposed by this Article, which fails, refuses or neglects to collect such tax or to make the reports and remittances required by this Article. The Director of Finance may have issued a summons to such person responsible for the hotel offering lodging to a transient, and the summons may be served upon such person by any Town Police Officer in the manner provided by law. One return of the original summons shall be made to the General District Court sitting in the Town.

B. In the event the purchaser of any transient room rental refuses to pay the tax imposed by this Article, the hotel operator may call upon the Police Department for assistance; and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the General District Court as provided by law.

Sec. 6-59 Violations; Penalty

Any person violating or failing to comply with any of the provisions of this Article shall, upon conviction thereof, be guilty of a Class 3 Misdemeanor.

ARTICLE 6

PARTIAL PROPERTY TAX EXEMPTION FOR CERTAIN REHABILITATED REAL PROPERTY (New 3-98)

Sec. 6-60 Definitions (New 3-98)

The words and phrases defined in this section, when used in this article, shall have the following meaning except in those instances where the context clearly indicates a different meaning:

"COMMERCIAL USE" means improved real property that is used for non-residential commercial purposes and zoned, C-1, C-1A, C-2, CM or CMP by the Town Zoning Laws but that term does not include any property zoned C-1B or any hotel.

"DIRECTOR" means the Director of Finance for the Town of Vienna or the designated agent for that director.

"HOTEL" means those structures which provide lodging for transients as defined by Section 18-4 of the Vienna Town Code.

"MULTI-FAMILY RESIDENTIAL REAL ESTATE" means improved real property zoned and used pursuant to Article 9, Section 18-55 et. seq. of the Zoning Ordinance of the Town of Vienna, but that term does not include any hotel.

"QUALIFYING PROPERTY" means an improvement to real property that is qualified to receive a tax credit pursuant to this Article.

"RESIDENTIAL REAL ESTATE" means improved real property used for residential purposes and zoned RS-16, RS-12.5, RS-10, RTH, RM-2 in the Zoning Ordinance of the Town of Vienna.

Section 6-61 Partial property tax exemption for certain rehabilitated, renovated or replacement residential structures (New 3-98; amended 6-02; 9-07)

A. This Section authorizes a partial exemption for improved real property from the general real estate tax by providing tax credits for real property that is rehabilitated, renovated or replaced in accordance with Virginia Code §58.1-3220 and the provisions of this Article. For purposes of this Section, residential real estate shall be deemed to be substantially rehabilitated, renovated or replaced when a structure, which is no less than twenty-five years old, has been so improved or replaced so that the fair market value of the improved or replacement structure is

increased by no less than twenty-five percent. Multi-family residential real estate shall be deemed to be substantially rehabilitated, renovated or replaced when a residential structure, which is no less than twenty-five years old, has been so improved or replaced so that the fair market value of the improvement to the property is increased by no less than forty percent.

In addition to all other qualification criteria set forth in this Article, the resultant dimensional footprint of residential real estate and multi-family residential real estate that is substantially rehabilitated, renovated or replaced may not exceed the total square footage of the footprint of the original, unimproved structure by more than thirty percent and be eligible for the tax credits authorized by this Section and may not cause lot coverage of the site to exceed twenty-five percent or such other lawful percentage as otherwise provided by variance previously ordered by the Board of Zoning Appeals. If residential real estate contains more than one residential structure, then each improved or replaced structure shall not exceed the total square footage of the footprint of each corresponding original, unimproved structure by more than thirty percent nor cause lot coverage of the site to exceed twenty-five percent or such other lawful percentage as otherwise provided by variance previously ordered by the Board of Zoning Appeals.

For the purposes of this section the word footprint shall mean that product obtained by multiplication of the dimensional length of the original structure by its dimensional width.

No improvements made to unimproved real property, or to any building lot created by a subdivision approved subsequent to March 2, 1998 on which lot no qualifying structure preexists the subdivision, shall be eligible for partial property tax exemption pursuant to this Section. No property shall be eligible for a partial property tax exemption pursuant to this Section unless all appropriate building permits have been acquired for the substantial rehabilitation, renovation or replacement of the structure on the property. No property shall be eligible for a partial property tax exemption pursuant to this Section if that property is substantially rehabilitated by the demolition and replacement of the structure that (i) is a registered Virginia landmark or (ii) is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

B. The owner of any residential real estate or multi-family residential real estate who seeks to obtain the partial property tax exemption authorized by this Section shall apply for such an exemption to the Director at the same time that the owner applies for a building permit to rehabilitate, renovate, or replace a structure. Upon receipt of an application for partial property tax exemption, the Director shall determine a base fair market value assessment (hereinafter "Base Value") for the structure prior to commencement of rehabilitation, renovation or replacement. The base fair market value assessment shall be determined by either an assessment for the purposes of Fairfax County taxation made at the time of the owner's application for exemption or, in the absence of same, by applying that most recent assessment previously made for the purposes of Fairfax County taxation. That Base Value shall serve as the basis for

determining whether the rehabilitation, renovation, or, replacement increases the fair market value of the structure by at least twenty-five percent in the case of residential real estate and forty percent of multi-family residential real estate. The application to qualify for tax exemption shall be effective until December 31 of the third calendar year following the year in which application is submitted. If by such expiration date, rehabilitation, renovation, or replacement has not been progressed to such a point that the assessed fair market value of the improvement to the property is at least the minimum required percent greater than the Base Value of such structure, and if the applicant desires to proceed with the application, then a new application for partial tax exemption shall be filed with the Director, and thereafter the Director shall establish a new Base Value. All initial and subsequent applications for the partial exemption authorized by the Section shall be accompanied by payment of a non-refundable \$50.00 fee for processing the application. During the period between the receipt of the application and the time when the Director may ascertain that the fair market value of the structure has increased in value by at least the minimum percent specified in Paragraph A of this Section, the owner of the property shall be subjected to real property taxation upon the full fair market value of the property. At any time prior to November 1 of any calendar year in which rehabilitation, renovation or replacement of a structure is complete, an owner may submit a written request to the Director to inspect the structure to determine if it qualifies for a partial real property tax exemption. After the Director has determined that the assessed fair market value of a substantially rehabilitated, renovated or replaced structure exceeds the Base Value by the percentage specified by Paragraph A of this Section, the tax exemption shall become effective beginning on January 1 of the next calendar year.

C. Subject to the provisions of Paragraph D of this Section and to Section 6-64, the owner of any residential or multi-family residential structure qualifying for partial exemption from the real estate tax because of substantial rehabilitation, renovation or replacement shall be issued a credit for the general real property tax otherwise due on the fair market value of that property in an amount that is equal of the real property tax levy calculated on the difference in value between the Base Value and the initial fair market value of the substantially rehabilitated, renovated or replaced structure. That credit shall be applied for each year of the ten-year period following completion of the substantial rehabilitation, renovation or replacement. In each year of the four-year period following the initial ten-year period, owner of the qualifying property shall be issued a credit for the real estate tax otherwise due on the fair market value of that property in an amount equal to the value of the real property tax levy calculated on the difference in value between the Base Value and the initial fair market value of the substantially rehabilitated, renovated or replaced structure, less twenty percent for each year following the expiration of the initial ten-year period exemption. Credits against the real estate tax for any residential or multi-family real estate qualifying pursuant to this Section shall not run with the land but shall apply only to owner or owners on the date the tax exemption becomes effective and except as otherwise provided by Paragraph D of this Section and by Section 6-64, the owner or owners of such property, so long as they remain the sole owners of said property during each of the fourteen years of the exemption period shall be entitled to receive a credit in the amount

paragraph. All exemptions and credits shall automatically cease and be void upon transfer of ownership whether by contract, testamentary disposition or descent and distribution.

D. In the event that the fair market value of a qualifying residential or multi-family residential structure increases after the first year of such substantial rehabilitation, renovation or replacement, the credit specified in Paragraph C of this Section shall not be increased. In the event that the fair market value of a qualifying property decreases after the first year of substantial rehabilitation, renovation, or replacement, the credit specified in Paragraph C of this Section shall be limited to the extent that the credit shall not reduce the real property tax on a qualifying property below an amount equal to the amount of the real property tax computed on the Base Value. If any tax credit computed in accordance with Paragraph C of this Section is reduced in accordance with this Paragraph, that credit reduction shall not be applied to any other property or to real property taxes assessed in any other calendar year. If the fair market value of any qualifying property decreases below the Base Value, then that qualifying property shall be assessed at full market value, and no credit against the general real property tax shall be allowed. If no tax credit can be granted because the fair market value of a qualifying property is below the Base Value, that unused credit shall not be applied to any other property or to real property taxes assessed in any other calendar year.

E. In determining the Base Value of any structure, and in determining whether any structure has been substantially rehabilitated, renovated, or replaced to the extent that the fair market value of the improved or replaced structure exceeds the Base Value by the percent specified in this Section, the Director shall employ usual and customary methods of assessing real property and improvements thereon and shall be bound by the values established by assessment for the purpose of Fairfax County Taxation.

F. This Section shall be applicable to assessments of qualifying residential and multi-family residential real estate made on and after January 1, 1998. However, no new application for partial property tax exemption shall be accepted after September 1, 2012.

Section 6-62 Partial property tax exemption for certain rehabilitated, renovated or replacement commercial structures (New 3-98; amended 6-02; 9-07)

A. This Section authorizes a partial exemption for improved real property from the general real estate tax by providing tax credits for real property that is substantially rehabilitated, renovated or replaced in accordance with Virginia Code § 58.1-3221 and the provisions of this Article. For purposes of this Section, any structure that is substantially rehabilitated, renovated or replaced for commercial use shall be deemed to be substantially rehabilitated, renovated or replaced when a structure, which is no less than twenty-five years old, has been so improved or replaced so that the fair market value of the improved or replaced structure to the property is

increased by no less than forty percent.

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In addition to all other qualification criteria set forth in this Article, no commercial structure on property that has been substantially rehabilitated, renovated or replaced may exceed the total square footage of the original unimproved structure by more than one hundred percent and be eligible for the tax credits authorized by this Section. If such commercial property contains more than one structure, then each improved or replacement structure may exceed the total square footage of each corresponding original, unimproved structure by no more than one hundred percent.

No improvements made to unimproved real property, or to any building lot created by a subdivision approved subsequent to March 2, 1998 on which lot no qualifying structure preexists the subdivision, shall be eligible for a partial property tax exemption pursuant to this Section. No property shall be eligible for a partial property tax exemption pursuant to this Section unless all appropriate building permits have been acquired for substantial rehabilitation, renovation or replacement of the structure on the property. No property shall be eligible for a partial property tax exemption pursuant to this Section if that property is substantially rehabilitated by the demolition and replacement that (i) is a registered Virginia landmark or (ii) is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

B. The owner of any property who seeks to obtain the partial property tax exemption authorized by this Section shall apply for such an exemption to the Director at the same time that the owner applies for a building permit to rehabilitate, renovate or replace a structure. Upon receipt of an application for partial property tax exemption, the Director shall determine a base fair market value assessment (hereinafter "Base Value") for the structure prior to commencement of rehabilitation, renovation or replacement. The base fair market value assessment shall be determined by either an assessment for the purposes of Fairfax County taxation made at the time of the owner's application for exemption or, in the absence of same, by applying that most recent assessment previously made for the purposes of Fairfax County taxation. That Base Value shall serve as the basis for determining whether the rehabilitation, renovation or replacement increases the fair market value of the structure by at least forty percent. The application to qualify for tax exemption shall be effective until December 31 of the third calendar year following the year in which application is submitted. If by such expiration date, rehabilitation, renovation or replacement has not progressed to such a point that the assessed fair market value of the improvement to the property is at least the minimum required percent greater than the Base Value of such structure, and if the applicant desires to proceed with the application, then a new application for partial tax exemption authorized by this Section shall be filed by the Director, and thereafter the Director shall establish a new Base Value. All initial and subsequent applications for the partial exemption authorized by this Section shall be accompanied by payment of a non-refundable \$50.00 fee for processing the application. During the period between the receipt of the application and the time when the Director may ascertain that the fair market value of the structure has increased in value by at least the minimum percent specified in Paragraph A of this

Section, the owner of the property shall be subject to real property taxation upon the fair market value of the property. At any time prior to November 1 of any calendar year in which

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rehabilitation, renovation or replacement of a structure is complete, an owner may submit a written request to the Director to inspect the structure to determine if it then qualifies for a partial real property tax exemption. After the Director has determined that the assessed fair market value of a substantially rehabilitated, renovated or replaced commercial structure exceeds the Base Value by the percentage specified by Paragraph A of this Section, the tax exemption shall become effective beginning on January 1 of the next calendar year.

C. Subject to the provisions of Paragraph D of this Section and to Section 6-64, the owner of any commercial structure qualifying for partial exemption from the real estate tax because of substantial rehabilitation, renovation or replacement shall be issued a credit for the general real property tax otherwise due on the fair market value of that structure in an amount that is equal to the value of the real property tax levy calculated on the difference in value between the Base Value and the initial fair market value of the substantially rehabilitated, renovated or replaced structure. That credit shall be applied for each year of a ten-year period following completion of the substantial rehabilitation, renovation or replacement. In each year of a four-year period following the initial ten-year period, the owner of the qualifying property shall be issued a credit for the real estate tax otherwise due on the fair market value of that property in an amount equal to the value of the real property tax levy calculated on the difference in value between the Base Value and the initial fair market value of the substantially rehabilitated, renovated or replaced structure, less twenty percent for each year following the expiration of the initial ten-year period exemption. Credits against the real estate tax for any structure qualifying pursuant to this Section shall not run with the land, and except as otherwise provided by Paragraph D of this Section and by Section 6-64, the owner of such structure, so long as such owner remains the sole owner of said structure, during each of the fourteen years of the exemption period, shall be entitled to receive a credit in the amount specified by this Paragraph. All exemptions and credits shall automatically cease and be void upon transfer of ownership whether by contract, testamentary disposition or descent and distribution.

D. In the event that the fair market value of a qualifying property increases after the first year of such substantial rehabilitation, renovation or replacement, the credit specified by paragraph C of this section shall not be increased. In the event that the fair market value of a qualifying property decreases after the first year of substantial rehabilitation, renovation or replacement, the credit specified in paragraph C of this section shall be limited to the extent that the credit shall not reduce the real property tax on a qualifying property below an amount equal to the amount of the real property tax computed on the base value. If any tax credit computed in accordance with paragraph C of this section is reduced in accordance with this paragraph, that credit reduction shall not be applied to any other property or to real property taxes assessed in any other calendar year. If the fair market value of any qualifying property decreases below the base value, then that qualifying property shall be assessed at full fair market value, and no credit against the general real property tax shall be allowed. If no tax credit can be granted because the

fair market value of a qualifying property is below the base value, that unused credit shall not be applied to any other property or to real property taxes assessed in any other calendar year.

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E. In determining the Base Value of any structure, and in determining whether any structure has been substantially rehabilitated, renovated or replaced to the extent that the fair market value of the improved or replaced structure exceeds the Base Value by the percent specified in this Section, the Director shall employ usual and customary methods of assessing real property and improvement thereon and shall be bound by the values established by assessment for the purposes of Fairfax County Taxation.

F. This Section shall be applicable to assessments of qualifying commercial structures made on and after January 1, 1998. However, no new application for partial property tax exemption shall be accepted after September 1, 2012.

Section 6-63 [Reserved]

Section 6-64 Failure to pay real estate taxes in a timely manner; forfeiture of partial exemption and tax credits; and further qualification limitations (New 3/98)

A. No tax credit described in Sections 6-61 and 6-62 shall be issued to any owner of any substantially rehabilitated, renovated or replaced structure if the real estate tax on that property has not been paid on or before July 28 and December 5 of any year, as required by Section 6-3. Failure to pay the real estate tax on improved real property in any year on or before the date which the real estate tax is due shall result in the forfeiture of any partial tax exemption and tax credit that otherwise would have been applied to the real estate tax due in that year, and in such cases, the annual real estate tax shall be assessed on the full fair market value of the improved real property. Late payment of the real estate tax on real property and any substantially rehabilitated, renovated or replaced structure thereon shall be subject to late payment penalties and interest in accordance with Section 6-3. However, the Director may waive any penalty and reinstate any tax credit if the failure to pay the real estate tax was not in any way the fault of the taxpayer.

B. Notwithstanding any other provision of this Article, except in instances in which an improved property has been substantially damaged by an action that is beyond the control of the owner or occupant, as those actions are defined herein, no improved property which has qualified for a tax credit in accordance with this Article by means of substantial rehabilitation, renovation or replacement shall be eligible to submit any application for further tax credits based on subsequent improvements during the pendency of the initial tax credit period. If an improved property which has qualified for a tax credit in accordance with this Article is damaged by an action that is beyond the control of the owner or occupant, and if the property may otherwise qualify for tax credits in accordance with this Article, then the owner of the real estate may apply

for tax credits based on the then present value of the damaged property, and the qualification for any new tax credits shall supersede and extinguish any tax credits that may have been available

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under the previous qualifications. For the purposes of this subsection, the term "action that is beyond the control of the owner or occupant" shall include fire, flood and windstorm that reduces the fair market value of the property by no less than twenty-five percent.

Section 6-65 Administration (New 3-98)

The Director shall prepare and distribute application forms for persons who apply for partial property tax exemption pursuant to Sections 6-61 and 6-62, and the Director may prescribe rules and procedures for the administration of this Article that are not in conflict with this Article. Copies of such application forms and any prescribed rules and procedures shall be available to the public during regular office hours at the Office of the Director.

Article 7 - Telecommunication Use Fees for Public Rights-of-Way

Section 6-70 Whereas it is provided by general law that (1) every telegraph company and every telephone company incorporated by the Commonwealth of Virginia or any other state, or by the United States, shall have authority to occupy and use the public parks, roads, works, turnpikes, streets, avenues and alleys in any of the counties of the Commonwealth, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town upon obtaining an appropriate franchise and with the consent of the council thereof, for the erection of poles and wires, or cables, or the laying of underground conduits, portions of which they may lease, rent, or hire to other like companies; and (2) no locality shall impose any fees on a certificated provider of telecommunications service for the use of public rights-of-way except in a manner prescribed in Section 56-468.1 of the Code of Virginia 1950, as amended; provided, however, the provisions of Section 56-468.1 shall not apply to providers of commercial mobile radio services; and (3) no locality shall require any such provider of telecommunication service to provide in-kind services or physical assets as a condition of consent therefor; provided, however, that localities, their authorities or commissions which provide utility services may enter into voluntary pole attachment, conduit occupancy or conduit construction agreements with such providers of telecommunication services; and

Whereas, Section 56-468.1 of the Code of Virginia 1950, as amended, sets forth in detail the manner in which the Public Rights-of-Way Use Fee is to be calculated for the benefit of localities in the Commonwealth, the extent of its application, the method and means of billing and collecting said fee and transmission of the appropriate amount thereof to the Town of Vienna and other localities.

NOW THEREFORE, be it ORDAINED BY THE TOWN COUNCIL OF VIENNA, VIRGINIA, that notwithstanding any other provision of law, including its charter, or Code section of, or any franchise granted, by the Town of Vienna, or any other ordinance, resolution or provision of law heretofore adopted or applicable to the Town of Vienna in any way relating thereto, and in lieu of any other fee or charge therefor, the Town of Vienna hereby adopts the Public Rights-of-Way Use Fee as hereinabove described, effective as of October 9, 1998 in order that collection of the said fee shall commence as provided in subparagraph I of said section 56-468.1 of the Code of Virginia 1950, as amended. Terms herein shall have the same meaning as outlined in Section 56-468.1.

The Director of Finance is directed to give notice in writing forthwith of the Town of Vienna's adoption of the Public Rights-of-Way Use Fee to be sent by certified mail to the registered agent of each certificated provider of local telephone exchange service within the Town.

Vienna Town Code

Article 8 - Procurement (New 11/98)

Sec. 6-71 PURPOSE AND SCOPE (New 11/98)

The purpose of this Ordinance is to ensure compliance with the Virginia Public Procurement Act and other applicable state law as amended. This Ordinance applies to the procurement of all goods, services, insurance, and construction by all Town of Vienna departments, whether by purchase order, contract, or agreement and regardless of funding source except as otherwise specified herein or by state and federal law.

Sec. 6-72 DEFINITIONS (New 11/98; Amended 3/05)

For the purposes of this section, the definitions in Title 2.2, Chapter 43, Section 2.2-4301 of the Code of Virginia 1950, as amended, shall apply.

Sec. 6-73 POSITION OF THE PURCHASING AGENT (New 11/98)

There is hereby created in the Department of Finance the position of Purchasing Agent. The Purchasing Agent shall be the public purchasing official of the Town of Vienna. The Purchasing Agent shall work under the direction of the Director of Finance and shall enforce applicable state law and the provisions of this Ordinance. The Purchasing Agent shall purchase or supervise the purchasing of all goods, services, insurance, and construction except as otherwise provided for herein and shall maintain the Town's official bidders list.

The Purchasing Agent shall be responsible for the sale, trade, or disposal of surplus property and shall, under the supervision of the Director of Finance, establish and maintain purchasing procedures and requirements that enforce compliance with applicable state law and the provisions of this Ordinance.

Sec. 6-74 METHODS OF PROCUREMENT (New 11/98; Amended 3/05)

For the purposes of this Ordinance, Title 2.2, Chapter 43 of the Code of Virginia 1950, as amended, shall apply to the procurement of goods, services, insurance, and contracts in amounts greater than \$10,000.00 except as otherwise provided for herein.

Sec. 6-74.1 SMALL PURCHASE PROCEDURES (New 11/98; Amended 3/05)

A. \$10,000 to \$30,000

Purchases and contracts of at least \$10,000 but not exceeding \$30,000 shall be competitively procured by written request for written quotations to vendors on the Town's bidders list. Recordation and tabulation of the quotations shall be provided to the Purchasing Agent who, with the approval of the Director of Finance, shall issue a purchase order following compliance with applicable administrative procedures and authorization and award by Town Council.

All contracts appended to purchase orders including cooperative purchases that require special terms and conditions in addition to the Town's standard terms and conditions shall be executed by the Mayor and attested by the Town Clerk.

B. Professional Services

Procurement of Professional Services in an amount not to exceed \$30,000 shall be by competitive negotiation, and initiated by written request for written proposals to the maximum number of offerors that can be reasonably anticipated to submit responses.

Upon receipt of written proposals, the selection shall be made as provided for under ACompetitive Negotiation at paragraph B. of Section 2.2-4303 of the Code of Virginia 1950, as amended.

C. \$1,000 to \$10,000

Purchases and contracts of at least \$1,000 but not exceeding \$10,000 shall be competitively procured by the effected department head or the Purchasing Agent by verbal or written request for quotation to the vendors on the Town's bidders list. Recordation and tabulation of the quotations shall be made by the effected department head and a purchase order shall be issued by the Purchasing Agent with the approval of the Director of Finance.

D. \$100 to \$1,000

Purchases and contracts of less than \$1,000 but more than \$100 shall be awarded by the Purchasing Agent following the approval of the requisitioning department head and the Director of Finance.

Sec 6-74.2 COOPERATIVE PROCUREMENT (New 11/98; Amended 3/05)

For the purposes of this Ordinance, Section 2.2-4304 of the Code of Virginia 1950, as amended, shall apply. Cooperative procurement of goods, services, insurance, and contracts in an amount exceeding \$10,000 shall be approved by the Town Council. Cooperative procurement of goods, services, insurance, and contracts in an amount not exceeding \$10,000 shall be executed by the Purchasing Agent following approval of the requisitioning department and the Director of Finance.

Sec. 6-75 EXCEPTION TO COMPETITIVE PROCUREMENT (New 11/98; Amended 3/05)

For the purposes of this Ordinance, exceptions to competitive procurement of goods, services, insurance, and construction in amounts greater than \$10,000 but less than \$30,000 shall be those as provided for in Title 2.2, Chapter 43 of the Code of Virginia 1950, as amended, and shall be issued as prescribed therein.

Exceptions to the competitive procurement of goods, services, insurance, and construction in amounts of \$10,000 or less shall be justified in writing for the reasons as provided for in Title 2.2, Chapter 43 of the Code of Virginia 1950, as amended and approved by the Town Manager.

Sec. 6-76 EFFECTIVE DATE (New 11/98; Amended 3/05)

This Ordinance shall become effective on April 4, 2005. Procurement of goods, services, insurance, and construction prior to the effective date of this Ordinance shall continue to be governed by Title 2.2, Chapter 43 of the Code of Virginia 1950, as amended.

Vienna Town Code